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09/682,046	07/13/2001	Frank Leymann	DE920000015US1	6970

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EXAMINER

BARQADLE, YASIN M

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 07/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/682,046

Applicant(s)

LEYMANN ET AL.

Examiner

Yasin M Barqadle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

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**DETAILED ACTION**

1. Claims 1-18 are presented for examination.

**Claim Rejections - 35 USC § 102**

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Kirch US (6324161).

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As per claim 1, Kirch teaches a computerized method for indicating availability of one or a multitude of application-servers (Fig. 3a);

said method comprising a first step of inserting into an availability-database (internal timing table) a first-data-element comprising a notification-period (timeout period), said notification-period defining an upper time limit (supply period) for a repetition period of an availability-signal being repeated as long as said application-server is available [Col. 8, lines 25-67 to Col. 9, lines 1-58]; and

said method comprising a second step of inserting into said availability database a second-data-element comprising for each availability-signal its corresponding time stamp as availability-time [Col. 18, lines 34-67]; and

whereby, the difference of the current-time and a recent availability-time compared to said notification-period is representing a measure of availability of said application-server [Col. 19, lines 65-67 to Col. 20, lines 1-59].

As per claim 2, Kirch teaches a computerized method for indicating availability according to claim 1, said method comprising a third step of updating said notification-period depending on the amount of workload of said application-server either by increasing said notification-period, if said amount of the workload increases, or by decreasing said notification-period, if said amount of the workload decreases

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[Col. 8, lines 25-56; Col. 10, lines 54-67 and Col. 11, lines 1-34].

As per claim 3, Kirch teaches a computerized method for indicating availability according to claim 1, wherein within said first and said second step also an application-server identification is inserted into said availability-database and associated with said first and said second-data-element [Col. 8, lines 25-56].

As per claim 4, Kirch teaches a computerized method for indicating availability according to claim 3, wherein said measure of availability indicates unavailability of said application server, if said difference exceeds said notification-period [Col. 19, lines 65-67 to Col. 20, lines 1-59].

As per claim 5, Kirch teaches a computerized method for indicating availability according to claim 1, wherein said availability-database is shared by a multitude of application servers each comprising a hot-pool of said one or multitude of application servers, and wherein for said hot-pool a watchdog is monitoring said hot-pool's availability status, and wherein said method is being executed by said watchdog, and wherein said availability-signal is being repeated as long as at least one of said application-servers of said hot-pool is available, and

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wherein within said first and said second step also a hot-pool-identification is inserted into said availability-database and is associated with said first- and said second-data-element [Col. 9, lines 25-67 and Col.9, lines 1-63].

As per claim 6, Kirch teaches a computerized method for indicating availability according to claim 2, whereby as a second difference the difference of said recent availability-time and a previous availability-time is included in said measure of availability [Col. 19, lines 65-67 to Col. 20, lines 1-59; Col. 23, lines 39-67 to Col. 240-50].

As per claim 7, Kirch teaches a computerized method for indicating availability according to claim 5, whereby as a second difference the difference of said recent availability-time and a previous availability-time is included in said measure of availability [Col. 19, lines 65-67 to Col. 20, lines 1-59].

As per claim 8, Kirch teaches a computerized method for determining availability of one or multitude of application-servers for accepting application-service-request, said method comprising a first step of querying an availability-database for a first-data-element comprising a notification-period (timeout period), said notification period defining an upper time limit (supply period), for a repetition-period of an availability signal being repeated as

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long as said application-server is available [Col. 8, lines 25-67 to Col. 9, lines 1-58], and  
for a second-data-element comprising for a recent  
availability-signal its time stamp as recent availability-time,  
and said method comprising a second step of determining a measure  
of availability of said application-server by comparing the  
difference of the current-time and said recent availability-time  
to said notification-period, said method comprising a third step  
of issuing an application-service-request to said  
application-server only, if said measure of availability  
indicates availability of said indication-server [Col. 19, lines  
65-67 to Col. 20, lines 1-59].

As per claim 9, Kirch teaches a computerized method for  
determining availability according to claim 8, wherein said  
measure of availability of the second step indicates  
unavailability of said application-server, if said difference  
exceeds said notification-period [Col. 19, lines 65-67 to Col.  
20, lines 1-59].

As per claim 10, Kirch teaches a computerized method for  
determining availability according to claim 8, wherein said  
method is querying in said first step also for a  
third-data-element comprising a previous availability-time for a  
previous availability-signal [Col. 19, lines 7-67 to Col. 20,  
lines 1-59], and

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wherein in said second step also as a second difference the difference of said recent availability-time and said previous availability-time is included in said measure of availability [Col. 19, lines 7-67 to Col. 20, lines 1-59].

As per claim 11, Kirch teaches a computerized method for determining availability according to claim 8, wherein said measure of availability indicates unavailability of said application-server, if said difference exceeds said notification-period by a factor of N [Col. 19, lines 65-67 to Col. 20, lines 1-59].

As per claim 12, Kirch teaches a computerized method for determining availability according to claim 10, wherein said method is being executed for a multitude of application-servers, and wherein in said third step a subset of application-servers, comprising application-servers for which said measure of availability indicates availability, is determined, and for each application-server within said subset its corresponding measure of availability is interpreted as a workload indication, and said application-service-request is being issued to an application-server with the lowest workload [Col. 8, lines 25-56; Col. 10, lines 54-67 and Col. 11, lines 1-34].

As per claims 13 and 16, these are system claims with similar limitations as the method claim 1 above, see the rejection made on claim 1 above.



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As per claims 14 and 15, 17 and 18, these are computer program product claims with similar limitations as the method claim 1 above; see the rejection made on claim 1 above.

### Conclusion


3. The prior made of record and not relied upon is considered pertinent to applicant's disclosure.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Yasin M Bargadle whose telephone number is 703-305-5971. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Burgess can be reached on 703-305-9717. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-304-3900.

Yasin Bargadle  
June 30, 2003



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